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S.B. CIVIL MISC. APPEAL NO.871/2006.
(Jagdish Prasad & Ors. Vs. Vijya Ben & Anr.)

Date of Order :: 20.09.2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Surendra Surana, for the appellants.

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Heard learned counsel for the appellants and perused the record.

By way of this appeal the claimant-appellants seek to challenge the common award dated 10.05.2005 made by the Motor Accidents Claims Tribunal, Sirohi in so far it relates to Claim Case No.34/2004; and seek enhancement over the compensation amount of Rs.1,50,000/- awarded by the Tribunal on account of accidental death of Kumari Neelam (13 years), daughter of the appellant Nos. 1 and 2 and sister of the appellant Nos. 3 to 6.

Brief relevant facts are that on 07.11.2003 the claimants Jagdish Prasad, Kamla Devi, Arvind Kumar, the deceased Kumari Neelam and others were travelling in a jeep bearing registration No. RJ 24 T 718 driven by Ashok Singh going from Revdar to Abu Road. Near Daulpura the jeep had a head-on collision with a car bearing registration No. GJ 3 AB 2884. The accident resulted in capsizing of both the vehicles; the jeep driver Ashok Singh and the occupants Kamla Devi, Jagdish Prasad, Arvind Kumar and Kumari Neelam sustained

several injuries; and Kumari Neelam succumbed to the injuries. Car driver Ashok Bhai Kakdiya also expired due to the injuries sustained in the accident.

Five claim applications were submitted before the Tribunal. While Jagdish Prasad, Ashok Singh, Kamla Devi and Arvind Kumar claimed compensation for the injuries sustained by them in the accident by moving claim applications under Sections 166, 140 of the Motor Vehicles Act ('the Act'); whereas the parents and brothers of Kumari Neelam claimed compensation for her death by moving the claim application under Section 163-A of the Act. The Tribunal considered all the five claim applications together.

So far the responsibility towards accident is concerned, the Tribunal found both the drivers responsible for the mishap and found it to be a case of composite negligence for all the victims except Ashok Singh, driver of the jeep, for whom it were a case of contributory negligence. The Tribunal noticed varying injuries sustained by the claimants and so also the fact that Kumari Neelam expired due to the injuries sustained in the accident.

Taking up quantification of compensation in relation to the Claim Case No.34/2004 relating to the demise of Kumari Neelam, the Tribunal found that the deceased was 13 years in age having no independent income. The Tribunal referred to the

fact that the claim application was moved under Section 163-A of the Act; referred to the Second Schedule to the Act and observed that notional income of an unearning person is taken at Rs.15,000/- per annum. The deceased was a school going student having no independent income and, therefore, fixed her notional income at Rs.15,000/- per annum and after deducting one-third on her personal expenditure, considered it appropriate to apply multiplier of 15 to assess the loss at Rs.1,50,000/-. While making the award in this sum of Rs.1,50,000/-, the Tribunal allowed the award amount to the parents of the deceased, claimant Nos.1 & 2 and to her minor brother, claimant No.6.

Learned counsel appearing for the appellants has strenuously contended that looking to the brilliance exhibited by the deceased in her studies, she had a brilliant future ahead and the Tribunal has been in error in not awarding just compensation on account of her accidental death and the amount awarded by the Tribunal remains too low and deserves suitable enhancement.

Having examined the considerations adopted by the Tribunal and the award in its totality, this Court is satisfied that though the award is on lower side but cannot be said to be grossly inadequate so as to call for any interference in appeal.

The deceased was about 13 years in age having no independent income. In such matters, the pecuniary loss could be assessed only on the basis of notional income and learned Judge of the Tribunal cannot be said to have erred in taking notional income of the deceased Kumar Neelam at Rs.15,000/- per annum and then adopting multiplicand at Rs.10,000/- per annum after deducting one-third on personal expenditure. The claimants Jagdish Prasad and Kamla Devi, parents of the deceased though made claim applications in relation to their own injury cases under Section 166 of the Act but chose to make application for compensation in relation to the case of their deceased daughter Kumari Neelam under Section 163-A of the Act. In this view of the matter, the Tribunal cannot be said to have erred in proceeding with reference to the Second Schedule to the Act only. The Tribunal has provided for the maximum multiplier permissible for the victims upto the age of 15 years. The Tribunal has of course not allowed separate compensation towards non-pecuniary loss and funeral expenses but the award in its totality cannot be said to be falling too low or grossly inadequate.

In the aforesaid view of the matter, there appears no reasonable ground to admit this appeal and the same is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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